



Atty. Dkt. No. 029319-0201

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jay A. Haines

Title: INFRARED REFLECTIVE WALL
PAINT

Appl. No.: 10/811,065

Filing Date: 3/26/2004

Examiner: Alain Bashore

Art Unit: 1762

Conf. No.: 8080

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below.	
<u>Vanessa E. Agne</u> (Printed Name)	
<u>Vanessa E. Agne</u> (Signature)	
<u>August 24 2006</u> (Date of Deposit)	

DECLARATION OF JAY A HAINES UNDER 37 C.F.R. 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Jay A. Haines, being duly warned, hereby declare as follows:

1. I am the inventor of the above-referenced patent application and the subject matter described and claimed therein.
2. I am President of Textured Coatings of America, Inc., 2422 East 15th Street, Panama City, FL 32405. I am familiar with the products sold by Textured Coatings of America, Inc., the historic and current costs and revenues associated with these products, and sales and revenues of related products of the architectural coatings industry in the United States.
3. I have read the specification and claims for the above-referenced patent application.
4. I have read the Office Action dated July 12, 2006, for the above-referenced patent application

5. Textured Coatings of America, Inc. manufactures the paints disclosed in the above-referenced patent application with brand name Supercote™. In this declaration, the term "Supercote IR" refers to Supercote™ paint having the infrared (IR) reflective pigments described in the application, which pigments comprise a solid solution having a corundum-hematite crystal lattice structure. The term "Supercote Non-IR" refers to Supercote™ paint which lacks the infrared-reflective pigment of the above-referenced patent application.

6. I am aware of the declaration of Julie A. Mowery ("Mowery Declaration") submitted herewith. The Mowery Declaration provides sales and pricing data for the Supercote™ brand of Textured Coatings of America, Inc. A summary of these data are provided following:

Year	Supercote Sales (Thousand \$)			Sales Growth Supercote IR (%)	Supercote Price (\$)		TexCote Sales (Thousand \$)
	Non-IR	IR	Total		Non-IR	IR	
2000	148.94		148.94		18.95		13,418.68
2001	139.93		139.93		18.95		12,752.78
2002	568.42		568.42		18.95		11,536.82
2003	295.69	1,312.99	1,608.68	183.0	18.95	24.95	13,527.71
2004		2,800.43	2,800.43	392.7		29.95	14,629.64
2005		3,240.09	3,240.09	470.0		30.95	15,393.21
2006		4,212.67	4,212.67	641.3		34.95	16,794.98

7. In the table above, the column entitled "Supercote Sales" provides sales data (i.e., total annual sales) for the period 2000-2006 for both Supercote Non-IR and Supercote IR. The term "Non-IR" refers to sales of Supercote Non-IR. The term "IR" refers to sales of Supercote IR. The "Total" column provides the sum of Supercote Non-IR and Supercote IR sales. Supercote IR was introduced in 2003, and at that time Textured Coatings of America, Inc. discontinued the sale of Supercote Non-IR, except for the sale of product to complete ongoing projects. Accordingly, all sales of Supercote™ subsequent to the introduction of Supercote IR in 2003 should be considered Supercote IR sales. Thus, the columns labeled "Non-IR" and "IR"

represent sales prior and subsequent to the introduction of Supercote IR. The column labeled "Sales Growth" represents the annual growth in sales of Supercote™ with respect to sales in 2002. The term "Supercote Price" refers to the manufacturer's suggested retail price per gallon for Supercote Non-IR and Supercote IR. Sales data for 2006 have been annualized based on actual sales through June, 2006. The term "Texcote Sales" refers to total sales of Textured Coatings of America, Inc. All sales values are in thousands of dollars.

8. After I conceived and reduced to practice the paint of the current invention, Textured Coatings of America, Inc. began offering this paint under the Supercote™ brand name already being marketed. The only difference in the composition of Supercote Non-IR and Supercote IR is the inclusion of the infrared-reflective pigments of the present invention in the latter.

9. I understand that expected sales of the Supercote™ brand is an important factor in the determination of the commercial success of the claimed invention. Accordingly, estimates of expected sales of the Supercote™ brand must rely on the best assumptions and data available. First, in order to establish a baseline level of sales, I took the largest sales total (i.e., 2002) in the period 2000-2002 (see table above and Exhibit 1 of Mowery Declaration) for Supercote Non-IR to arrive at a baseline annual sales of \$568,421/yr. Second, in order to estimate the expected sales for Supercote Non-IR in 2005, I assumed that absent the introduction of Supercote IR, sales of Supercote Non-IR would have followed the general sales increase observed in the exterior water-type architectural paint market as reported by the U.S. Census Bureau Economic and Statistical Administration. As provided in the Mowery Declaration (Item 11), this market experienced a 9.36% increase in sales in the period 2002-2005. Third, given the assumptions on baseline sales and expected increase, the expected sales for Supercote Non-IR in 2005 would have been \$621,625 (i.e., \$568,421 x 1.0936). As shown in the table above, the actual sales of Supercote™ in 2005 amounted to \$3,240,090, which is 421.2% in excess of the expected sales.

10. I understand that consumer demand is an important consideration in the determination of commercial success. Virtually the entire U.S. market for energy conserving paint is directed to

eliminating heat through the roof. Indeed, to my knowledge Supercote IR is the only product on the market which incorporates infrared-reflective pigments comprising a solid solution having a corundum-hematite crystal lattice structure and which is expressly manufactured for application to the external vertical walls of a building.

11. I am aware of another product which is possibly similar to Supercote IR; however, details of the product are proprietary to the manufacturer Sherwin-Williams and are not publicly available to the best of my knowledge. The product, entitled VINYLSAFE™, was recently introduced specifically for coating vinyl siding. The public introduction was January 2006, approximately two-years after the filing of the above-referenced application. A major selling point for VINYLSAFE™, contained in the Sherwin-Williams brochures provided herewith as Exhibits 1-2, is the elimination of buckling of vinyl siding due to heating effects. Based on all available information of which I am aware, there is no indication that any of the VINYLSAFE™ products contain the infrared-reflective pigments comprising a solid solution having a corundum-hematite crystal lattice structure of the above-referenced application. However, even in the event that VINYLSAFE™ does contain pigments described in the above-referenced application, in their own advertising material, Sherwin-Williams does not acknowledge energy savings as a factor for using VINYLSAFE™. In other words, it appears that even the largest U.S. paint manufacturer has not realized the energy savings available by using the methods of the above-referenced application; i.e., painting the exterior vertical walls of a building with a paint which includes an infrared-reflective pigment.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements are so made punishable by fine or imprisonment, or both, under Section 101 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

8/21/06

Date

Jay A. Haines

Attachments:

- Exhibit 1: VINYLSAFE™ Brochure
(http://www3.sherwin.com/do_it_yourself/sherwin_williams_products/exterior_house_paint/pdfs/VinylSidingBrochure_diy.pdf)
- Exhibit 2: VINYLSAFE™ Brochure http://www.sherwin-williams.com/pro/sherwin_williams_paint/sherwin_williams_paints/exterior_paint/pdfs/SHERW1073_Vinyl_Sidings_SS.pdf

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(http://www3.sherwin.com/do_it_yourself/sherwin_williams_products/exterior_house_paint/pdfs/VinylSidingBrochure_diy.pdf)



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A vertical advertisement for Sherwin-Williams VinylSafe™ Color Technology. At the top is a small logo of a person holding a paintbrush, with the text 'SHERWIN-WILLIAMS' below it. The main headline reads 'Vinyl siding that's even easier to live with.' Below this is the product name 'VinylSafe™ Color Technology'. The central image shows a dark-colored vinyl-sided house with a white-framed window and a white-framed door. In the foreground, a white car is parked. The bottom of the ad features the text 'MORE COLOR OPTIONS • WON'T BUCKLE SIDING'.

AUG. 28 2006

PATENT & TRADEMARK OFFICE

Ask Sherwin-Williams.

sherwin-williams.com

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MORE COLOR OPTIONS • WON'T BUCKLE SIDING

WITHOUT VINYLSAFE COLOR TECHNOLOGY

WITH VINYLSAFE COLOR TECHNOLOGY

Sherwin-Williams® VinylSafe™ Color Technology prevents vinyl siding from buckling - even with darker colors.

LOOK FOR THE VINYLSAFE™ COLORS COLOR CARD AT YOUR NEIGHBORHOOD SHERWIN-WILLIAMS STORE.

VinylSafe™ Color Technology

for dark colors only

Refresh your vinyl siding with more color options than ever.

Until now, there were limitations to painting vinyl siding. Using a dark color on top of lighter siding would cause the siding to buckle. Your only option was to choose the same color or lighter. No longer.

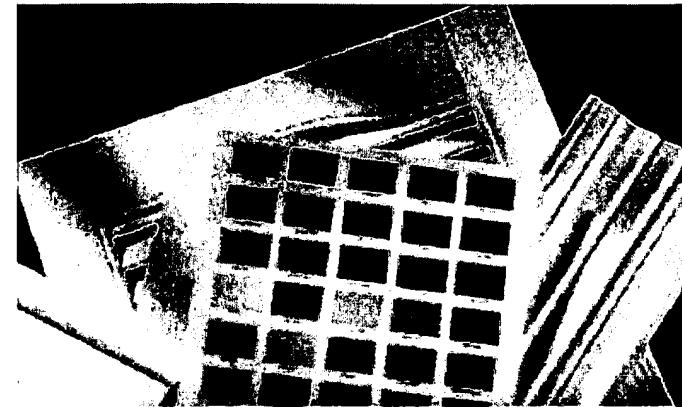
Sherwin-Williams VinylSafe™ Color Technology provides a wide color selection and excellent performance on vinyl without buckling - even when using a dark color.

Choose from 100 popular color options in our new VinylSafe™ palette, or have our Sher-Color™ computer matching technology create the custom match you've been looking for.

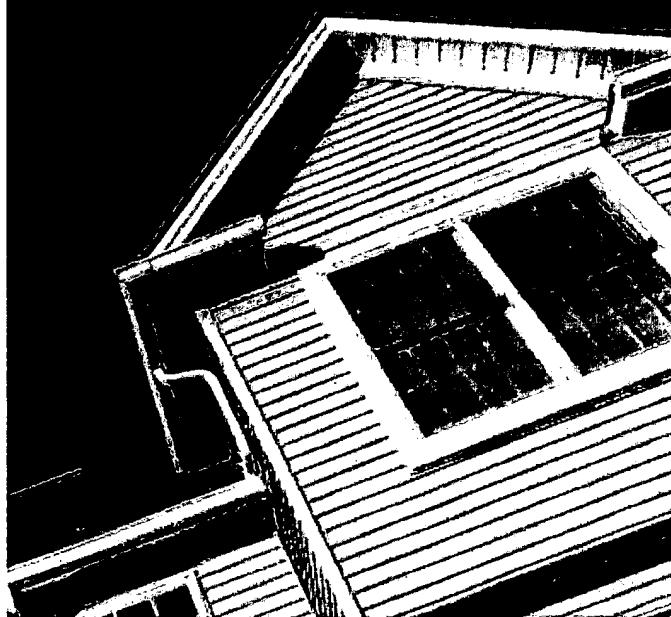
VinylSafe Color Technology is available in Duration® Exterior Latex Coating and SuperPaint® Exterior Latex Paint. Each promises a quality finish that resists blistering and peeling.



Exhibit 2: VINYLSAFE™ Brochure (http://www.sherwin-williams.com/pro/sherwin_williams_paint/sherwin_williams_paints/exterior_paint/pdfs/SHERW1073_Vinyl_Sidings_SS.pdf)



VINYLSAFE™ COLOR TECHNOLOGY



**VINYLSAFE COLOR TECHNOLOGY.
GIVE HOMEOWNERS THE FREEDOM TO CHOOSE
THE VINYL SIDING COLOR THEY REALLY WANT.**

OFFER A SELECTION YOUR COMPETITION CAN'T MATCH.



Be sure to apply the paint on all areas, especially where the vinyl siding pieces overlap.

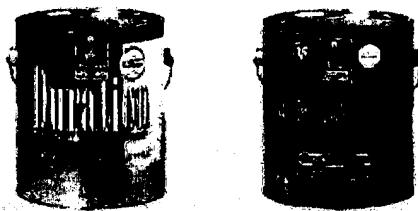


In the past, vinyl siding would buckle when painted with a darker color. But, with Sherwin-Williams SuperPaint or Duration, our Vinyl Color Palette, and VinylSafe Color Technology, that problem is solved.

OUR VINYL SIDING COLOR TECHNOLOGY DELIVERS THESE EXCLUSIVE BENEFITS:

- **Keeps vinyl siding from buckling**
- **Paints over vinyl siding that's already buckled**
- **Creates a smooth, consistent look** (SuperPaint, Duration and VinylSafe)
- **Delivers a wide range of colors** (VinylSafe)

Ask to see our Vinyl Siding Color Card at your local Sherwin-Williams store.



Last year, only 4% of homes with vinyl siding were painted. We'll help you change that.

In the past, vinyl siding could only be painted the same color or lighter. But, our innovative VinylSafe Color Technology solves that problem. We've developed a new color palette that won't cause vinyl siding to buckle when darker colors are applied. So, you'll be able to turn all those unpainted homes into unique business opportunities.

THE POSSIBILITIES WILL OPEN YOUR CUSTOMERS' EYES AND THEIR WALLETS

We've created innovative color formulas that let you paint dark colors on light vinyl with confidence. Plus, custom matches can be created with our Sher-Color™ advanced computer matching technology. By offering more color options you can increase the volume of exterior work and your profits.

A GREAT COLOR SELECTION GETS BETTER WITH OUR GUARANTEED PREMIUM PAINTS

Each vinyl siding custom color is available in SuperPaint® Exterior and Duration® Coatings. Lab and field tests prove these products deliver excellent performance on vinyl without buckling. And now with VinylSafe Color Technology, light-colored vinyl siding can be painted a darker color, so you can offer your customers fresh curb appeal with more color options.

DURATION EXTERIOR COATING WITH PERMALAST™ TECHNOLOGY

- Unique one-coat warranty on repaints
- Best exterior protection possible
- Stops blistering and peeling
- Superior hide
- Thicker, more flexible formula
- Available in flat, satin and gloss

SUPERPAINT EXTERIOR COATING WITH ADVANCED RESIN TECHNOLOGY

- Resists blistering, peeling, fading, and chalking
- Provides excellent hide and durability
- Available in flat, satin, gloss and high gloss

INDUSTRY-LEADING INNOVATION, FROM A NAME YOU CAN TRUST

Our Vinyl Siding Color Palette and VinylSafe Color Technology give you another unique innovation to offer your customers. For 140 years, Sherwin-Williams has provided contractors like you with the products and support you need to build your business. And with 3000 stores and sales representatives across North America, personalized service is always available near your jobsite.

FIND OUT MORE ABOUT VINYL SIDING COLORS.
For more information, contact your nearest Sherwin-Williams Store or Sales Representative or call 1-800-524-5979 to have a rep contact you.

